

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON**

|  |   |
|--|---|
| <b>IN RE: ETHICON, INC. PELVIC REPAIR<br/>SYSTEM PRODUCTS LIABILITY<br/>LITIGATION</b> | <b>Master File No. 2:12-MD-02327<br/>MDL No. 2327</b> |
| <b>THIS DOCUMENT RELATES TO: [see<br/>attached list of cases]</b>                      | <b>JOSEPH R. GOODWIN<br/>U.S. DISTRICT JUDGE</b>      |

**DEFENDANTS' MOTION FOR AN ORDER TO SHOW CAUSE WHY CLAIMS  
SHOULD NOT BE DISMISSED BASES UPON LACK OF STANDING AND/OR  
JUDICIAL ESTOPPEL**

Defendants Johnson & Johnson, Ethicon, Inc., and Ethicon LLC move for entry of an order to show cause why Plaintiff's claims should not be dismissed for lack of standing and/or because Plaintiff is judicially estopped from asserting the claims. In support of this Motion, Defendant states as follows:

1. Plaintiff stated under oath in her Plaintiff Profile Form that she had filed for bankruptcy protection.<sup>1</sup> To the extent that Plaintiff sought bankruptcy protection after the personal injury claim asserted in this litigation arose, the cause of action is the property of the bankruptcy estate, and Plaintiff lacks standing to pursue the claim.

2. Further, if Plaintiff sought bankruptcy protection after her claim arose but did not disclose that claim in the bankruptcy action, and received either a discharge of debts or a repayment plan approved by the bankruptcy court, then Plaintiff is judicially estopped from asserting claims against Defendants for monetary relief. Plaintiff's position in this litigation--

---

<sup>1</sup> Defendants have endeavored to exclude Plaintiffs whose only disclosed bankruptcy filing was closed prior to her implant surgery.

that she is entitled to monetary relief against Defendants -- is inconsistent with her position before the bankruptcy court—that no such claims existed.

3. Plaintiff's filing or maintenance of a bankruptcy proceeding after her implant surgery calls into question her standing to pursue the claims asserted here. The information necessary to establish Plaintiff's standing to pursue her claims is information that Plaintiff and her counsel should have possessed before her claim was filed. Defendants ask that the Court enter an Order to Show Cause why Plaintiff's claim should not be dismissed for lack of standing and/or under the doctrine of judicial estoppel.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court enter a Show Cause Order requiring Plaintiff to provide, within 20 days of the date of the Order, documentary evidence showing that (1) her claim asserted in this proceeding arose after her bankruptcy proceeding was closed, or (2) the claim asserted in these proceedings was disclosed in the bankruptcy proceeding and the Trustee abandoned the claim to Plaintiff.

Respectfully submitted,

ETHICON, INC., JOHNSON & JOHNSON, and  
ETHICON LLC

---

David B. Thomas (W. Va. Bar No. 3731)  
Thomas Combs & Spann, PLLC  
300 Summers Street, Suite 1380  
P.O. Box 3824  
Charleston, WV 25338-3824  
(304) 414-1800

---

Christy D. Jones  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
1020 Highland Colony Parkway  
Suite 1400 (39157)  
P.O. Box 6010  
Ridgeland, MS 39158-6010  
(601) 985-4523

**CERTIFICATE OF SERVICE**

I, Christy D. Jones, certify that on November \_\_, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

---

Christy D. Jones  
Butler, Snow, O'Mara, Stevens & Cannada, PLLC  
1020 Highland Colony Parkway  
Suite 1400 (39157)  
P.O. Box 6010  
Ridgeland, MS 39158-6010  
(601) 985-4523

Counsel for ETHICON, INC., JOHNSON &  
JOHNSON, and ETHICON LLC